

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **08.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.648 of 2015
and
M.P.No.1 of 2015

Vijaya

.. Petitioner

vs

1. P.Thyagarajan
2. P.Karunanithi
3. Sathiyavani
4. Loganayaki
5. Anandhi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.12.2014 passed by the learned Subordinate Judge, Dharapuram in I.A.No.773 of 2014 in O.S.No.35 of 2012.

For Petitioner : Mr.S.Saravanan

For Respondents : Mr.S.Ramesh for RR1 and 2
Mr.S.Sugendran
for RR3 to 5

ORDER

The plaintiff is the revision petitioner.

2. This revision is directed against the order dismissing the application filed by her under Order 20 Rule 12 Code of Civil Procedure. The suit is filed for partition of plaintiff's 1/6th share, for separate possession and for an injunction not to alienate. According to the plaintiff, the suit property was purchased by her father and till his death, it was enjoyed in common without any partition and thereafter also there was no division between the parties. The mother of the plaintiff also died in the year 2011 after which, though the plaintiff is entitled to a share, the defendants have not been agreeing for the same. Hence, the above suit. It is stated that the third item of the suit property are shops and houses through which, the defendants are receiving rent to the tune of Rs.2,40,000/- and the plaintiff is therefore, entitled to Rs.40,000/- being her share. Therefore, pending suit, the plaintiff has filed the above application in I.A.No.773 of 2014 in O.S.No.35 of 2012 praying her share.

3. The said application was resisted by the defendants, contending that the suit itself is not maintainable, as the plaintiff has already released her share of the property in favour of the first and second defendants by virtue of release deed dated 08.03.2007. When the plaintiff is not entitled to a share in the suit property itself, she cannot claim any share in the income derived from the same. Therefore, the defendants prayed for the dismissal of the application.

4. The learned trial Judge also after considering the rival submissions, dismissed the application against which, this revision has been preferred.

5. In the plaint filed, the revision petitioner/plaintiff has not sought for the relief of mesne profits. It is only stated in the affidavit that the plaintiff is entitled to a share from out of the rents received from the suit property, which is around Rs.40,000/- approximately. Curiously, the plaintiff has not let in any evidence for the alleged income that is derived from the suit

property. When she has relinquished her share by way of release deed in the year 2007 itself, along with respondents 3 to 5, she cannot have any claim over the suit property or in the income derived there from. In fact, the trial court has found that the Court fees has been paid by the plaintiff based on the joint possession of the property. But now she is claiming a share in the property and seeks also a direction for an enquiry under Order 20 Rule 12 of the Code of Civil Procedure.

6. The mesne profit enquiry can be directed by the Court only, after the preliminary decree has been passed declaring the shares of the parties. But in the case on hand, the plaintiff has not even prayed for the relief of mesne profits and has also not let in any evidence to that effect. When the share of the plaintiff itself has not yet been determined, it is premature to direct for a mesne profits enquiry that too, in the absence of any evidence to the claim.

7. In view of the above, I find no merit in this revision, Accordingly, the revision fails and the same is dismissed. No

costs. Consequently, the connected miscellaneous petition is closed.

08.02.2017

vj2

Index : Yes/No

Internet: Yes

To

The Subordinate Judge, Dharapuram

PUSHPA SATHYANARAYANA,J.,

vj2

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